

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LYNN Z. SMITH,

Appellant,

v.

CAROL L. KNOWLTON, ESQ.,

Appellee.

Civ. No. 18-14350

OPINION

R E C E I V E D

OCT 17 2018

AT 8:30 AM
WILLIAM T. WALSH
CLERK

THOMPSON, U.S.D.J.

INTRODUCTION

This matter comes before the Court on the Application filed by Appellant Lynn Z. Smith ("Appellant") to proceed *in forma pauperis*, pursuant to 28 U.S.C. § 1915. (ECF No. 1-2.) For the reasons stated herein, Appellant's Application is denied.

LEGAL STANDARD

In considering an application to proceed *in forma pauperis*, the court generally conducts a two-step analysis. *See Roman v. Jeffes*, 904 F.2d 192, 194 n.1 (3d Cir. 1990). First, the court determines whether the plaintiff is eligible to proceed under 28 U.S.C. § 1915(a). To satisfy this initial inquiry, the litigant must file an application that includes an affidavit of indigence stating the individual's total income, assets, and inability to pay filing fees. *See* § 1915(a)(1); *Glenn v. Hayman*, 2007 WL 432974, at *7 (D.N.J. Jan. 30, 2007). Second, the court determines whether the complaint should be dismissed. A complaint may be subject to *sua sponte* dismissal if the complaint is frivolous, fails to state a claim upon which relief may be granted, or seeks money damages from defendants who are immune from such relief. *See* § 1915(e)(2)(B); *Roman*, 904 F.2d at 194 n.1. As under Rule 12(b)(6) of the Federal Rules of Civil Procedure, "[t]o survive

dismissal, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Schreane v. Seana*, 506 F. App’x 120, 122 (3d Cir. 2012) (per curiam) (citations omitted).

DISCUSSION

In this case, Appellant has not filed an affidavit of indigence stating her income, assets, and inability to pay filing fees. See Application to Proceed In Forma Pauperis—Non Prisoner (AO 239), <http://www.njd.uscourts.gov/forms/application-proceed-forma-pauperis-non-prisoner-ao-239> (last visited Oct. 15, 2018) (providing an appropriate template for the required affidavit). Instead, Appellant attaches to her Application previous grants by other courts allowing her to proceed *in forma pauperis*. (ECF No. 1-2.) She adds that her “underlying financial condition is basically the same or worse” than it was previously. (*Id.*) However, Appellant’s financial situation cannot be assessed properly without an affidavit as required by § 1915(a). Appellant’s Application therefore fails at step one, and the Court need not consider step two of the inquiry.

DISCUSSION

For the foregoing reasons, Appellant’s Application to proceed *in forma pauperis* is denied. An appropriate Order will follow.

Date: 10 / 17 / 18


ANNE E. THOMPSON, U.S.D.J.